

REMARKS

Claims 1, 2, 6, 11, 12, 14-16, 18-21, 29, 31, 36, 37, 39, 41, 43, 45, 47, 51, 53 and 99 are amended. The amendments do not present new matter and are supported by the application as filed. Claims 1-3, 6-22, 24-26, 29, 31-58, 61, 62, 75, 76, 79, 80, 83, 84 and 87-99 are currently pending in the application.

Applicants acknowledge that the prior rejections based on Housely have been withdrawn. New grounds of rejection based on previously cited references are now asserted. Reconsideration and allowance of the application, as amended, are respectfully requested. Applicants respectfully traverse the rejections and submit the following remarks to advance the application to allowance.

I. Claims 1, 2, 6, 7-15, 18, 19, 24-26, 29, 31-42, 45-47, 50, 53, 55-58, 61, 62, 79, 80, 83, 84 and 87-99 Are Patentable Over Levinson and Wang

Independent claims 1, 15, 39, 53 and 99 and respective dependent claims 2, 6-14, 18, 19, 24-26, 29, 31-38, 40-42, 45-47, 50, 55-58, 61, 62, 79, 80, 83, 84, 87, 88 and 89-98 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,923,704 to Levinson (“Levinson”) in view of U.S. Patent No. 6,463,844 to Wang (“Wang”).

Under 35 U.S.C. § 103(a), to establish a *prima facie* case of obviousness of a claim, all the claim limitations must be taught or suggested by the prior art, and all words in a claim must be considered in judging the patentability of that claim against the prior art. Moreover, there must be some suggestion or motivation to modify the reference, and a reasonable expectation of success. MPEP §§ 2143; 2143.01; 2143.03. The mere fact that references “can” be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. A proposed modification of prior art cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of the reference, and it is improper to modify or combine references where the references teach away from the modification or combination. MPEP §§ 2143; 2143.01; 2143.03; 2145.

Claims 1, 15, 39, 53 and 99

The Office action's initial assumptions concerning housing sections disclosed by Levinson do not apply to claims 1, 15, 39 and 53. Applicants refer to the following limitations of independent claims 1, 15, 39, 53 and 99 for reference:

Claim 1: a microwaveable housing having a top housing section and a bottom housing section, each housing section defining an interior space, the top housing section being placed on top of the bottom housing section to close the microwaveable housing

Claim 15: a microwaveable housing having a bottom housing section and a top housing section, each housing section defining an interior space, said top housing section being placed on top of said bottom housing section to close said microwaveable housing

Claim 39: a microwaveable housing having a bottom housing section and a top housing section, each housing section defining an interior space, the top housing section being placed on top of the bottom housing section to close the microwaveable housing;

Claim 53: a microwaveable housing having a bottom housing section and a top housing section, each housing section defining an interior space

Claim 99: a microwaveable housing having a bottom housing defining an interior space and top housing section defining an interior space, the bottom and top housing sections being joined together to close the microwaveable housing

Thus, each independent claim recites limitations directed to a top housing section being placed on top of a bottom housing section to close the microwaveable housing. Accordingly, the claims recite a "top" and "bottom" structural configuration as opposed to "intermediate" structures or components. Thus, whatever the asserted top and bottom housing sections of a cited reference might be, the top section must be placed on top of the bottom section to close the housing.

The Office action relies primarily on Levinson and asserts that the “bowl” 12 is the “upper” housing section and the “collector assembly” 14 is the “lower” housing section. The Office action further asserts that the “grill” recited in the claims is perforated pan 46. Reading Levinson more closely, however, the cited reference cannot support the rejection. Levinson illustrates and explains that bowl 12 is placed on top of microwave transmissive pot 42. (See, e.g., Levinson, Figures 1, 3 and 7). Levinson also discloses metal pot 44. The metal pot 44 cannot be a “top” or “bottom” housing section since it is an intermediate component between bowl 12 and pot 42. Accordingly, the intermediate pot 44 is not relevant to Applicants’ claims, and if Levinson discloses a bottom housing section as recited in Applicants’ claims, it must be considered to be pot 42 since Figure 7 shows the bowl 12 on top of the pot 42 and Levinson explains the pot 42 has an upper rim 52, a chamber 64 is formed between the microwave transmissive pot 42 and the metal pot 44, and the rim 38 of the bottom of the bowl 12 is in sealing engagement with the upper rim 52 of the pot 42. (Levinson, col. 4, lines 30-38, 51-55).

Considering what Levinson actually discloses and illustrates, the cited reference does not disclose or suggest “a grill positioned within said bottom housing section” as recited in claim 1 and the related limitations of claims 15, 39 and 53. In contrast, Levinson shows perforated pan 46 placed on top of or inside of intermediate metal pot 44. Therefore, Levinson cannot support the rejection.

Additionally, Levinson does not disclose or suggest “said bottom housing section and said grill are structurally configured so that steam ... passes upwardly from said interior space of said bottom housing section, through said grill apertures, onto at least a bottom surface of the food item, and into said interior space of said top housing section” as recited in claim 1 and the related limitations of claims 15, 39, 53 and 99. In contrast, Levinson discloses a chamber 64 above the bottom of the pot 42, but does not disclose or suggest generating steam within chamber 64. Moreover, Figure 7 of Levinson shows that any steam that might be (or could be) generated within chamber 64 cannot pass upwardly through the perforated pan 46 because it would be blocked by the intermediate metal pot 44, which is “analogous to a frying pan.” (Levinson, col. 4, lines 63-64). As is well known in the art, a frying pan is solid and, therefore, blocks any steam that might be generated in chamber 64 from passing through the perforated pan 46. Therefore, steam does not, and cannot, rise upwardly from the “interior space of said bottom housing section” as recited in Applicants’ claims.

Claims 6-13, 31-38 and 56-58

For the reasons set forth above, Levinson also fails to disclose or suggest the limitations of dependent claims 6-13, 31-38, 56-58. MPEP §2143.03 (if an independent claim is non-obvious, then a claim that depends from the independent claim is also non-obvious).

Claims 15, 18, 39 and 40

The Office action assertions concerning independent claims 15 and 39 and dependent claims 18 and 40 are also not supported by Levinson. Claims 15 and 39 include limitations directed to a support member extending from an interior surface of said bottom housing section, and a grill positioned within said bottom housing section and suspended by said support member. Claims 18 and 40 recite that the support member is a ridge extending from an interior surface of the bottom housing section.

Levinson, however, discloses perforated pan 46 placed on top of or inside the intermediate metal pot 44, not on the shoulder 54 extending from pot 42. (Levinson, Fig. 7). Additionally, the perforated pan 46 is not suspended by shoulder 54. Accordingly, Levinson cannot support the rejection.

Claims 2, 19 and 41

Levinson also fails to disclose or suggest claims 2, 19 and 41, which include limitations directed to one or more support members extending upwardly from the bottom interior surface of the lower housing section. The Office action rejects these claims without identifying sections or elements of Levinson that actually disclose such support members. Nevertheless, Levinson fails to do so, and Applicants respectfully submit that the rejection be withdrawn.

Claims 14, 45 and 99

Levinson also fails to disclose or suggest limitations of dependent claim 14 and 45 and independent claim 99. Claim 14, for example, recites the grill being structurally configured so that “liquid from the heated food item can drain downwardly through said grill apertures to said bottom interior surface of said bottom housing section, and steam from the heated gelatinous ingredient passes upwardly from said interior space of said bottom housing section, through said grill apertures,

onto the food item, and into said interior space of said top housing section.” Thus, claims 14, 45 and 99 incorporate or recite limitations reciting steam passing upwardly from and, in addition, liquid passing downwardly to, the interior space defined by the bottom housing section.

Levinson, however, does not disclose or suggest generating steam within the chamber 64 above the pot 42, and the intermediate pot 44 (or “frying pan”) is not a top or bottom housing section. Further, the intermediate pot 44 blocks any steam might be generated within chamber 64, assuming such significant changes to Levinson were implemented. Likewise, the intermediate pot 44 prevents liquid from passing downwardly through the perforated pan 46 to the pot 42. The rejection of claims 14, 45 and 99, therefore, cannot stand given these deficiencies.

Claims 29 and 47

Levinson also fails to disclose or suggest the limitations of claims 29 and 47, which include limitations directed to the bottom interior surface of the lower housing section defining a reservoir. The Office action rejects these claims without identifying sections of Levinson that disclose a reservoir. Nevertheless, Levinson fails to do so, and Applicants respectfully submit that the rejection be withdrawn.

Claim 42

Paragraph 2, Page 2 of the Office action also rejects claim 42, which recites a vent. The Office action rejects claim 42 without identifying sections of Levinson that disclose a vent. Nevertheless, Levinson fails to do so, and Applicants respectfully submit that the rejection be withdrawn.

Claims 89-92

Levinson also fails to disclose or suggest the limitations of claims 89-91, which include “disposable” limitations, and the limitations of claim 92, which recite discarding the remaining portions of the packaged food product. The Office action rejects these claims without identifying sections of Levinson that actually disclose these limitations. Nevertheless, Levinson fails to do so.

Further, Levinson teaches away from these claims. For example, Levinson discloses that the apparatus is a “universal cooking kit” and that an “important feature” is that the bowl 12 have a

substantial mass, preferably from about 1.5 to 3 pounds. (Levinson, col. 1, lines 11-12; col. 4, lines 30-32). Persons skilled in the art would readily appreciate that such features and weight are those of a cooking kit that is reusable for later use rather than being disposable. Therefore, Levinson teaches away from these claims.

Claims 39-52, 61, 75, 79, 83, 87, 91, 95, 97 and 99

All of claims 39-52, 61, 75, 79, 83, 87, 91, 95, 97 and 99 are directed to a “packaged food product.” More specifically, a food product, includes a housing, a food item, a gelatinous ingredient, and a grill, which is packaged and, for example, sold in stores.

Levinson, however, clearly does not disclose or suggest such a packaged food product. In contrast, Levinson specifically describes an assembly into which food products are placed and then heated. These claims are, therefore, fundamentally different than Levinson in this regard.

To further demonstrate this point, Levinson discloses placing TV dinners (a frozen packaged food product) into the assembly. (Levinson, col. 9, lines 33-35). This clearly demonstrates that the assembly is not, and is not intended to be, a packaged food product as recited in claims 39-52, 61, 75, 79, 83, 87, 91, 95, 97 and 99. The rejection, therefore, improper.

Dependent Claims 2, 6-14, 18, 19, 24-26, 29, 31-38, 40-42, 45-47, 50, 55-58, 61, 62, 79, 80, 83, 84, 87, 88 and 89-98 are Patentable Over Levinson and Wang

In addition to the above deficiencies, Applicants note that dependent claims 2, 6-14, 18, 19, 24-26, 29, 31-38, 40-42, 45-47, 50, 55-58, 61, 62, 79, 80, 83, 84, 87, 88 and 89-98 add novel and non-obvious limitations to their respective dependent claims and are also patentable. Wang is cited for the limited purpose of disclosing a gelatinous ingredient. Wang, however, does not cure the deficiencies of Levinson and has its own deficiencies.

Accordingly, assuming the combination were made, the combination would nevertheless fail to disclose each and every limitation of the claims, and the rejection under of claims under 35 U.S.C. § 103(a) cannot stand. MPEP §§ 2143; 2143.03 (under 35 U.S.C. § 103(a), to establish a *prima facie* case of obviousness of a claim, all the claim limitations must be taught or suggested by the prior art if an independent claim is non-obvious, then a claim that depends from the independent claim is also non-obvious).

Nevertheless, what is described by Wang is a composition 21 that includes a conventional flavoring agent that is dispersed or dissolved in water, cooling oil, or is provided in powder form. (Wang, col. 1, line 8; col. 11, lines 31-37). Wang is otherwise silent as to gelatinous properties, and is silent as to what kinds of flavoring agents it includes.

Dependent Claims 3, 20-22, 43, 44 and 54 Are Patentable Over Levinson, Wang and Koochaki

Koochaki is cited for the limited purpose of disclosing a vent. Koochaki, however, does not cure the deficiencies of Levinson and Wang. Accordingly, assuming *arguendo* the combination were made, the combination would nevertheless fail to disclose each and every limitation of the claims, and the rejection under of claims under 35 U.S.C. § 103(a) cannot stand. MPEP §§ 2143; 2143.03 (under 35 U.S.C. § 103(a), to establish a *prima facie* case of obviousness of a claim, all the claim limitations must be taught or suggested by the prior art; if an independent claim is non-obvious, then a claim that depends from the independent claim is also non-obvious).

Additionally, simply because the structure of Levinson “can” be changed to include a vent does not, in and of itself, mean that the required suggestion or motivation to include a vent exists. MPEP § 2143.01 (mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination). Nevertheless, the required suggestion or motivation to combine the references and make the requisite structural changes is lacking, particularly considering that Levinson refers to sustaining “superatmospheric pressures,” which would not be attainable when using a vent that releases steam. Specifically, Levinson explains:

It is an **important feature** of this invention that the microwave transmissive bowl 12 have a **substantial mass**, preferably from about 1.5 to 3 pounds whereby a **reliable sealing engagement** between the rim 38 and the perimeter sealing ring 24 can be established, sufficient to **permit development of superatmospheric pressure** in the chamber 40. (Levinson, col. 4, lines 30-36) (emphasis added).

Given the importance of the seal to develop superatmospheric pressure, Levinson clearly teaches away from a vent and the required structural modifications. Consequently, the required suggestion or motivation to combine and modify the references is clearly lacking since adding a vent would negate the “important feature” of providing superatmospheric pressure. The rejection, therefore, is improper and should be withdrawn. MPEP § 2145.

Dependent Claims 16, 17, 51 and 52 Are Patentable Over Levinson, Wang and Barnes

Barnes is cited for the limited purpose of disclosing a connector. Barnes, however, does not cure the deficiencies of Levinson and Wang. Accordingly, assuming *arguendo* the combination were made, the combination would nevertheless fail to disclose each and every limitation of the claims, and the rejection under of claims under 35 U.S.C. § 103(a) cannot stand. MPEP §§ 2143; 2143.03 (under 35 U.S.C. § 103(a), to establish a *prima facie* case of obviousness of a claim, all the claim limitations must be taught or suggested by the prior art if an independent claim is non-obvious, then a claim that depends from the independent claim is also non-obvious).

Additionally, simply because Levinson “can” be changed to include a connector of Barnes does not, in and of itself, mean that the required suggestion or motivation to include a connector exists. MPEP §2143.01 (mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination). The required suggestion or motivation to combine the references and make the requisite structural changes is lacking, particularly considering that Levinson refers to a specific structural configuration and “important feature” of the bowl 12 having **substantial mass**, preferably from about 1.5 to 3 pounds whereby a **reliable sealing engagement** between the rim 38 and the perimeter sealing ring 24 can be established. (Levinson, col. 4, lines 30-36) (emphasis added).

The Office action has set forth no feasible explanation why a connector, particularly a flexible connector, would be suitable to support a bowl 12 having substantial mass up to three pounds. Rather, one can only reasonably infer that such connectors are not suitable for such substantial masses and, therefore, Levinson teaches away from adding such connectors.

Therefore, Applicants respectfully request that the rejection be withdrawn.

Dependent Claims 48 and 49 Are Patentable Over Levinson, Wang and Craft

Dependent claims 48 and 49 add novel and non-obvious limitations to independent claim 39. Craft is cited for the limited purpose of disclosing an inert gas, but does not cure the deficiencies of the other cited references. Therefore, the rejection cannot stand. MPEP §2143.03 (if an independent claim is non-obvious, then a claim that depends from the independent claim is also non-obvious).

Dependent Claims 75 and 76 Are Patentable Over Levinson, Wang and Thompson

Dependent claims 75 and 76 add novel and non-obvious limitations to independent claims 39 and 53. Thompson is cited for the limited purpose of disclosing an agar ingredient, but does not cure the deficiencies of the other cited references, and the rejection cannot stand. MPEP §2143.03 (if an independent claim is non-obvious, then a claim that depends from the independent claim is also non-obvious).

Moreover, there is no suggestion or motivation to combine the references. Under 35 U.S.C. § 103(a), to establish a *prima facie* case of obviousness of a claim, there must be some suggestion or motivation to modify the reference, and a reasonable expectation of success. MPEP §§ 2143.01-2143.03. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP § 2143.01. Thompson discloses using agar as a stabilizer to reduce cracking of doughnut glazes, which is not related to the objectives discussed in Levinson and Wang. Moreover, Levinson and Wang do not suggest the problem of glaze cracking and do not disclose or suggest why it would be desirable to include an ingredient that has corn syrup and agar. Rather, the Examiner's assertion essentially boils down to the assertion that the combination "can" be made, which is insufficient and improper to support a rejection under §103(a). MPEP § 2143.01.

Accordingly, Applicants respectfully request that the rejection of dependent claims 75 and 76 under 35 U.S.C. § 103(a) be withdrawn

Conclusion

Based on the forgoing amendments and remarks, the Applicants respectfully submit that the application is in condition for allowance and respectfully request that a timely Notice of Allowance be issued in this case. If there are any remaining issues that can be resolved by telephone, Applicants invite the Examiner to contact the undersigned at the number indicated below.

Respectfully submitted,

BINGHAM McCUTCHEN, LLP

Dated: September 22, 2006

By: 

Gary D. Lueck
Registration No. 50,791
Attorneys for Applicants

Three Embarcadero Center, Suit 1800
San Francisco, California 94111-4067
Telephone: (213) 680-6400
Facsimile: (213) 680-6499